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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 1634-2011 (O&M)
Date of Decision : 11.05.2018

Sube Singh

..... appellant

Versus

Randhir Singh and Others

..... Respondent

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present :- Mr. S.P. Chahar, Advocate for
Mr. Ajay Ghangas, Advocate
for the appellant.

Mr. Sunil Chadha, Senior Advocate with
Mr. Chetan Bansal, Advocate
for the respondents.

Amit Rawal, J. (Oral)

The present regular second appeal has been filed at the instance of defendant- Sube Singh against the judgment and decree dated 22nd of December 2010 rendered by the Lower Appellate Court.

The respondent-plaintiff instituted the suit seeking permanent injunction against the appellants-defendants from forcible interference and dispossession with regard to the suit property (as detailed in para No.3 of the plaint) on the premise that the predecessor-in-interest of the parties had already partitioned the property (orally) in the year 1962 which was

accorded a stamp of the Court by judgment and decree dated 18.04.1975. Since the defendants were adamant to interfere in the peaceful possession of the plaintiffs, the cause of action arose to file the aforementioned suit.

The appellants-defendants contested the suit by raising the plea of maintainability and denied the partition of the property much less the judgment and decree. It was averred that the judgment and decree was not reflected in the revenue record or had seen the light of the day.

Since the parties had at variance, the trial Court framed the following issues:-

- 1. Whether the plaintiffs are entitled to a decree of permanent injunction as prayed for? OPP*
- 2. Whether the decree dated 18.04.1975, passed in Civil Suit No. 86 of 1975 titled as 'Ran Singh vs. Hari Singh' is illegal, null and void? OPD*
- 3. Whether this Court has no jurisdiction to try the present suit? OPD*
- 4. Relief.*

From a perusal of the issues, it revealed that the trial Court also framed Issue No.2 that as to whether the decree dated 18.04.1975 was illegal or null and void or not? The respondent-plaintiff brought on record Ex. P/1 the judgment and Ex.P/2 the decree, whereas appellant-defendent brought on record Ex.D/1 to D/16 i.e. the affidavits, jamabandies, inflations, pedigree table, fard, Rojnamcha to reflect that the property at the hands of the predecessor- in- interest of the predecessor stood joint.

On the basis of the aforementioned evidence, the trial Court dismissed the suit. However, in the appeal laid before the lower Appellate Court, the judgment and decree dismissing the suit was set aside by holding that the parties had already partitioned the suit property and the injunction sought for was granted. Hence, the present regular second appeal.

Mr. S.P. Chahar, learned counsel appearing on behalf of the appellant, submitted that the suit as framed was not maintainable as the property at the hands of the parties was in joint possession. No injunction against the co-sharer was maintainable or can be granted. The decree, if looked into, cannot be treated to be a preliminary decree for the reason that no steps have been taken to incorporate the alleged (oral) partition in the revenue record. The plaintiffs had not been able to prove their exclusive possession for the documents Ex.D/1 to D/16 show that the property was in joint possession. The lower Appellate Court thus, abdicated in setting aside the well reasoned judgement and decree of the trial Court.

Per contra, Mr. Sunil Chadha, learned Senior Counsel assisted by Mr. Chetan Bansal, Advocate appearing on behalf of the respondents-plaintiffs submitted that the parties had already effected the partition orally in the year 1962. The same was sought to be incorporated in the revenue record for which the appellants alone instituted the suit bearing No.86 of 1975 titled as 'Ran Singh Versus Hari Singh'. Ran Singh was predecessor-in-interest of the plaintiffs whereas Hari Singh that of the defendants. The defendants have failed to set up any counter claim to the decree which attained finality and, therefore, they could not be permitted to cause the wrong entry in the revenue record. The oral partition coupled with the

possession continued since 1962 and during all this period, none of the parties attempted to encroach upon each other possession except when a cause of action was arose and therefore, he urged for the dismissal of the appeal.

I have heard learned counsel for the parties and perused the record of the Courts below with the able assistance of the learned counsel for the parties and am of the view that the findings of the trial Court on Issue No.2 is not sustainable. Reasons are not one but a few. One, on plain and simple reading of the aforementioned judgment Ex.P/1 and decree Ex.P/2 reveals that Ran Singh and others and Hari Singh were accorded half share in the property which was never converted into final decree by the competent court of law so that the parties could seek its execution and reflect the entry in the revenue record. For all intents and purposes, the decree had become unexecutable. Second, the documents Ex.D/1 to D/16 i.e. jamabandies, mutations, fard etc. do not reflect any partition much less of the joint ownership. Even otherwise, during the course of the hearing, Mr. Chahar, learned counsel had made a statement that his client had no intention to interfere into the peaceful possession and cause dispossession of the respondents-plaintiffs. The said suit aforementioned was filed by the plaintiffs only when the defendants filed an application for the partition of suit property before the revenue authorities.

Concededly, the suit property was not situated within the municipal limits of Rohtak and the Civil Courts did not have a jurisdiction even to pass such an order. It would be the domain of the revenue Court in view of the provisions of Section 158 of the Punjab Revenue Act.

In view of the above, the findings rendered by the trial Court with regard to Issue No.2 is set aside and rest of the findings with regard to injunction restraining the appellants-defendants for not interfering in the peaceful possession till the property is partitioned are upheld.

The present revision petition is disposed of accordingly.

(AMIT RAWAL)
JUDGE

11.05.2018
Seema/Wasim Ansari

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No